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6 Attorneys for Defendant  
COUNTY OF SANTA CLARA

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
(San José Division)

11 CALVARY CHAPEL SAN JOSE, et al.,  
12 Plaintiffs,  
13 v.  
14 COUNTY OF SANTA CLARA,  
15 Defendant.

No. 20-CV-03794 BLF

## **STATUS REPORT RE STATE COURT PROCEEDING**

17 As previously directed by the Court, the County of Santa Clara submits this status report to  
18 apprise the Court of a recent order in *The People of the State of California, et al. v. Calvary Chapel*  
19 *San Jose, et al.*, No. 20CV372285, Superior Court of the State of California for the County of Santa  
20 Clara, which continues the hearing date on the County's motion for summary adjudication from  
21 January 17, 2023 to March 30, 2023.

22 As this Court has previously been apprised, the County filed a motion for summary  
23 adjudication in the Superior Court, which was set for hearing on January 17, 2023. Both the County  
24 and Calvary also have cross-motions for partial summary judgment pending in this Court, which are  
25 set for hearing on January 26, 2023.

26 On December 8, 2022, Calvary asked this Court to advance the hearing date on Calvary's  
27 motion for partial summary judgment to a date before January 17—i.e., any date before the hearing  
28 in Superior Court. Calvary based its motion on a several grounds, including Calvary's speculation

1 that “it is likely this Court could reach a different conclusion as [sic] the state court.” ECF 247 at 2.

2 On December 13, 2022, this Court denied Calvary’s motion. ECF 250.

3 On December 29, 2022, Calvary filed an ex parte application in Superior Court asking to  
4 continue the hearing date on the County’s motion for summary adjudication, arguing *inter alia* that  
5 one additional deposition was necessary. A copy of that application and Calvary’s supporting  
6 declaration is attached hereto as **Exhibit 1**.

7 On December 30, 2022, the County opposed the application, arguing that Calvary was  
8 plainly forum shopping and that Calvary had failed to explain why the requested deposition of a  
9 witness who has testified twice in the state proceedings and submitted declarations in both cases, and  
10 who the County had previously and repeatedly offered to Calvary for deposition—but Calvary had  
11 declined to take—was nonetheless necessary at this late date. A copy of that opposition and the  
12 County’s supporting declaration is attached hereto as **Exhibit 2**.

13 The Honorable Judge Socrates Peter Manoukian of the Superior Court considered Calvary’s  
14 application. Unfortunately, it appears that Judge Manoukian was not provided with, and thus did not  
15 have the benefit of, the County’s opposition, which had been filed on December 30 at 10:02 a.m. A  
16 copy of the filing confirmation is attached hereto as **Exhibit 3**.

17 On January 1, 2023, Judge Manoukian granted Calvary’s application, stating, incorrectly,  
18 “No opposition presented.” Pursuant to that order, the hearing on the County’s motion for summary  
19 adjudication has been continued to March 30, 2023, at 9 a.m. A copy of the January 1, 2023 order is  
20 attached hereto as **Exhibit 4**.

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The parties have apprised Judge Manoukian and the Superior Court of the error and the failure to consider the County's opposition, as shown in **Exhibit 5** attached hereto, but that court has taken no further action to date.

Dated: January 4, 2023

Respectfully submitted,

JAMES R. WILLIAMS  
County Counsel

By: /s/ Robin M. Wall  
ROBIN M. WALL  
Deputy County Counsel

Attorneys for Defendant  
COUNTY OF SANTA CLARA

2756776

# Exhibit 1

ORIGINAL

1 ADVOCATES FOR FAITH & FREEDOM  
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 10 Attorneys for Defendants **Calvary Chapel San Jose** and  
 11 **Mike McClure**

FILED  
 DEC 29 2022  
 Clerk of the Court  
 Superior Court of CA County of Santa Clara  
 BY \_\_\_\_\_ DEPUTY

E. Long-Miller  
 Long-Miller

## 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

## 9 FOR THE COUNTY OF SANTA CLARA

10 THE PEOPLE OF THE STATE OF  
 11 CALIFORNIA, COUNTY OF SANTA  
 12 CLARA, and SARA H. CODY, M.D., in her  
 13 official capacity as Health Officer for the  
 14 County of Santa Clara,

15 Plaintiffs,

16 v.

17 CALVARY CHAPEL SAN JOSE; MIKE  
 18 McClure; and DOES 1-501-50, inclusive,

19 Defendants.

Case No.: 20CV372285

**DEFENDANTS' *EX PARTE*  
 APPLICATION TO CONTINUE THE  
 HEARING DATE FOR PLAINTIFFS'  
 MOTION FOR SUMMARY  
 ADJUDICATION**

Date: January 17, 2023  
 Time: 11:00 a.m.  
 Dept.: D7  
 Judge: The Honorable Christopher Rudy

Complaint Filed: October 27, 2020

## 19 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

20 PLEASE TAKE NOTICE that on December 29, 2022, at 8:15 a.m., or as soon thereafter  
 21 as the matter may be heard, in Department D7 (or another assigned department) of the above-  
 22 referenced Court, located at 191 North First Street, San Jose, California 95113, Calvary Chapel San  
 23 Jose and Mike McClure (collectively "Defendants" or "Calvary") files this *Ex Parte* Application to  
 24 Continue the Hearing Date for the Motion for Summary Judgment filed by the Plaintiffs on August  
 25 26, 2022. Defendants make this request pursuant to California Rules of Court, rules 3.1200 *et seq.*  
 26 and Code of Civil Procedure section 427(c), subdivision (h).

27 The application is made on the grounds that Defendants needs additional time to conduct  
 28 discovery of facts essential to justify their opposition to summary adjudication. Specifically, the

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1 validity of Santa Clara County's ("the County") November 9, 2020 notice of violation is at issue,  
2 and Defendants, despite their diligence, have been unable to depose the county enforcement officer  
3 responsible for the November 9, 2022.

4 The application will be based on this notice, the attached memorandum of points and  
5 authorities, the pleadings, the declaration of Mariah Gondeiro, and such other matters which may  
6 be brought to the attention of this Court before or during the hearing. Defendants' counsel provided  
7 written notice of this *ex parte* application to Plaintiffs' attorneys, via email, on December 27, 2022.  
8 Plaintiffs oppose this application.

9  
10 DATED: December 28, 2022

ADVOCATES FOR FAITH & FREEDOM

11 By: Mariah Gondeiro

12 Mariah R. Gondeiro, Esq.  
13 Attorneys for Defendants **Calvary Chapel San  
14 Jose and Mike McClure**

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## **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Section 437c, subdivision (h) of the California Code of Civil Procedure allows a party to  
3 move for a continuance on a motion for summary adjudication when “facts essential to justify  
4 opposition exist, but cannot for reasons stated, be presented.” (Code Civ. Proc., § 437c(h).) The  
5 moving party may file an ex parte motion for continuance any time before the opposition brief is  
6 due. (*Id.*)

7 Continuance requests under section 437c, subdivision (h), are to be liberally granted. (*Bahl*  
8 *v. Bank of America* (2001) 89 Cal.App.4th 389, 395, 398-399 [“*Bahl*”]; *Dee v. Vintage Petroleum,*  
9 *Inc.* (2003) 106 Cal.App.4th 30, 34-35.) “[T]he interests at stake are too high to sanction the denial  
10 of [such] a continuance [request] without good reason.” (*Frazee v. Seely* (2002) 95 Cal.App.4th 627,  
11 634.) These interests include the importance of deciding cases on their merits rather than on  
12 procedural deficiencies. (*Bahl, supra*, 89 Cal.App.4th at pp. 398-399.)

13        Given the high stakes involved in motions for summary judgment and summary  
14 adjudication, continuances under section 437c, subdivision (h), are “virtually mandated ‘ ‘upon a  
15 good faith showing by affidavit that a continuance is needed to obtain facts essential to justify  
16 opposition to the motion.” ’ ” (*Id.; Johnson v. Alameda County Medical Center* (2012) 205  
17 Cal.App.4th 521, 532 [“When a party makes a good faith showing by affidavit demonstrating that a  
18 continuance is necessary to obtain essential facts to oppose a motion for summary judgment, the  
19 trial court must grant the continuance request.”].)

20 Continuance is necessary here. In July 2022, Calvary learned that the County did not fine  
21 non-commercial activities. (Gondeiro Decl., ¶ 3.) Around the same time, Calvary received the  
22 November 9, 2020 notice of violation in discovery, which the County purportedly relied upon to  
23 fine Calvary daily for not enforcing face coverings. (*Id.*, ¶ 2.) In November 2022, Calvary received  
24 an excel spreadsheet of specific complaints regarding non-commercial activities. (*Id.*, ¶ 8.) Calvary  
25 has not received the internal correspondence regarding these specific complaints, which is necessary  
26 to support Calvary’s affirmative defense regarding the constitutionality of the County’s urgency  
27 ordinance. (*Id.*, ¶ 9.) Specifically, this information would reveal whether the complaints were in  
28 relation to religious non-commercial activities or secular activities. (*Id.*, ¶ 10.)

1       Moreover, Calvary was scheduled to depose the enforcement officer who signed off on the  
 2 November 9, 2020 notice of violation and who has information regarding the complaints sent to the  
 3 County on December 21, 2022. (*Id.*, ¶ 10.) On December 19, 2022, the enforcement officer canceled  
 4 the deposition due to illness. (*Id.*, ¶ 11.) The purpose of the deposition was to reveal whether the  
 5 enforcement officer properly notified Calvary of its alleged violations of the face covering guidance,  
 6 a fact that is essential to Calvary's due process affirmative defense. (*Id.*, ¶ 11.) Calvary's counsel  
 7 has been working diligently to pursue all evidence necessary to support its affirmative defenses and  
 8 opposition to the Plaintiffs' motion for summary adjudication. (*Id.*, ¶ 13; *See A & B Painting and*  
 9 *Drywall, Inc. v. Superior Court* (1994) 25 Cal.App.4th 349, 356–357 [denials of summary  
 10 adjudication for the purpose of taking a deposition may be warranted if the declaration submitted in  
 11 support of the 437(c) motion “explain what efforts were made to take the necessary depositions or  
 12 why they could not have been taken earlier.”].)

13       For these reasons, good cause exists to grant the *ex parte* application for an order continuing  
 14 the hearing on summary adjudication to allow Calvary additional time to pursue facts essential to  
 15 its opposition.

16

17 DATED: December 28, 2022

ADVOCATES FOR FAITH & FREEDOM

18

19 By: Mariah Gondeiro

20 Mariah R. Gondeiro, Esq.

21 Attorneys for Defendants **Calvary Chapel San**  
**Jose and Mike McClure**

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**FILED**  
 DEC 29 2022  
*The People of the State of California v. Calvary Chapel San Jose*  
 Santa Clara Superior Court Case No. 20cv372285  
 Clerk of the Court  
 Superior Court of CA County of Santa Clara  
 BY *Susan Y. Kenney*  
 DEPUTY

I am an employee in the County of Riverside. I am over the age of 18 years and not a party to the within entitled action; my business address is 25026 Las Brisas Road, Murrieta, California 92562.

On December 29, 2022, I served a copy of the following document(s) described as **DEFENDANTS' EX PARTE APPLICATION FOR ORDER SHORTENING TIME TO HEAR RENEWED MOTION TO STAY; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested party(ies) in this action as follows:

SEE ATTACHED SERVICE LIST

- BY E-MAIL OR ELECTRONIC TRANSMISSION.** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I transmitted copies of the above-referenced document(s) on the interested parties in this action by electronic transmission. Said electronic transmission reported as complete and without error.
- BY FACSIMILE TRANSMISSION.** Pursuant to agreement and written confirmation of the parties to accept service by facsimile transmission, I transmitted copies of the above-referenced document(s) on the interested parties in this action by facsimile transmission from (951) 600-4996. A transmission report issued as complete and without error.
- BY UNITED STATES POSTAL SERVICE.** I am readily familiar with the practice for collection and processing of correspondence for mailing and deposit on the same day in the ordinary course of business with the United States Postal Service. Pursuant to that practice, I sealed in an envelope, with postage prepaid and deposited in the ordinary course of business with the United States Postal Service in Murrieta, California, the above-referenced document(s).
- BY OVERNIGHT DELIVERY.** I enclosed the above-referenced document(s) in an envelope or package provided by an overnight delivery carrier and addressed as above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- BY PERSONAL SERVICE.** I caused copies of the above-referenced documents to the addressee(s) noted above served by process server.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am an employee in the office of a member of the bar of this Court who directed this service.

*Susan Y. Kenney*

Susan Y. Kenney

## **SERVICE LIST**

*The People of the State of California v. Calvary Chapel San Jose  
Santa Clara Superior Court Case No. 20cv372285*

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10 Attorneys for Defendants

FILED  
 DEC 29 2022  
 Clerk of the Court  
 Superior Court of CA County of Santa Clara  
 BY *F. Tong-Miller* DEPUTY

11  
 12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 13 FOR THE COUNTY OF SANTA CLARA

14 THE PEOPLE OF THE STATE OF  
 15 CALIFORNIA, COUNTY OF SANTA  
 16 CLARA, and SARA H. CODY, M.D., in her  
 official capacity as Health Officer for the  
 County of Santa Clara,  
 Plaintiffs,  
 vs.  
 CALvary Chapel San Jose; MIKE  
 MCCLURE, and DOES 1-50,  
 Defendants.

Case No.: 20-CV-372285

DECLARATION OF MARIAH  
 GONDEIRO IN SUPPORT OF  
 DEFENDANTS' *EX PARTE*  
 APPLICATION TO CONTINUE THE  
 HEARING DATE FOR PLAINTIFFS'  
 MOTION FOR SUMMARY  
 ADJUDICATION

17 I, Mariah Rose Gondeiro, declare as follows:

18 1. I am an attorney duly licensed in the State of California and represent the interests of  
 19 defendants Calvary Chapel San Jose and Pastor Mike McClure ("Defendants") in this action and the  
 20 parallel federal court proceeding. Unless otherwise noted as being on information and belief, I know  
 21 the facts herein are stated based upon my own personal knowledge, and if called upon to do so, I could  
 22 competently testify to them under oath.

23 2. Around the summer of 2022, I received in discovery from Santa Clara County a notice  
 24 of violation dated November 9, 2020, which cited Calvary Chapel San Jose daily for purportedly not  
 25 enforcing face coverings. I was not aware of this notice of violation until it was sent in discovery.  
 26 Indeed, on December 2, 2020, former assistant pastor Carson Atherley sent me an email including the

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1 notices of violation sent in November 2020. The email only included notices of violation for November  
 2 8, 15, 22, and 29.

3       3. On July 21, 2022, I deposed Michael Balliet, Santa Clara County's lead enforcement  
 4 officer. During the deposition, I learned that Santa Clara County did not fine non-commercial activities,  
 5 as defined in Santa Clara County's urgency ordinance.

6       4. On August 18, 2022, I deposed Dr. Sara Cody and learned about Santa Clara County's  
 7 justification for its disparate treatment of religion. I also learned about the types of entities that were  
 8 deemed an essential government function. The deposition provided information that I had not been  
 9 privy to.

10      5. On August 19, 2022, I deposed Dr. Sarah Rudman about the county's contract tracing  
 11 system. During the deposition, I learned that while the county could trace COVID-19 cases to Calvary  
 12 Christian Academy, it could not trace cases to the church.

13      6. On or around August 2022, Santa Clara County produced in discovery its local health  
 14 guidelines for personal care services, sporting events, dining and bars, and childcare facilities. I was not  
 15 able to access the information online.

16      7. Around the same time, I also received discovery from Santa Clara County regarding its  
 17 training materials for its civil enforcement program related to COVID-19.

18      8. In November 2022, I received an excel spreadsheet from Santa Clara County listing  
 19 complaints from the public regarding non-commercial activities.

20      9. On December 6, 2022, I sent another discovery request to Santa Clara County,  
 21 specifically requesting all internal correspondence regarding the complaints about non-commercial  
 22 activities. This information supports Calvary's affirmative defense regarding the constitutionality of the  
 23 county's urgency ordinance. Specifically, it will reveal whether the complaints were in relation to  
 24 religious non-commercial activities or secular activities.

25      10. Calvary subsequently scheduled the deposition of Melissa Huerta for December 21,  
 26 2022. Ms. Huerta is a county health officer who has information about complaints sent to the county  
 27 and who signed off on the November 9, 2020 notice of violation. This information is vital to Calvary's  
 28 opposition, as it will determine whether the November 9, 2020 notice was sent to Calvary Chapel San

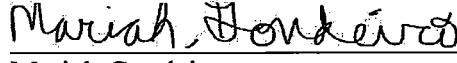
1 Jose. This information would support Calvary's affirmative defense regarding the Due Process Clause  
2 and would determine whether a triable issue of fact exists as to the amount of the fines.

3 11. On December 19, 2022, Jamila Benkato, the county's attorney, informed me that Melissa  
4 Huerta was sick and could not attend the deposition.

5 12. On December 21, 2022, Ms. Benkato informed me that the earliest date the county could  
6 make Ms. Huerta available was the first week of January 2023.

7 13. I have been primarily the only attorney working on this case and the parallel federal case  
8 for over a year. I have been working diligently to depose all relevant parties and produce all necessary  
9 discovery requests. Santa Clara County has produced over 36,000 documents, and I have been primarily  
10 responsible for reviewing all documents.

11 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
12 true and correct. Executed on December 28, 2022, at Murrieta, California.

13   
14 Mariah Gondeiro

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FILED  
DEC 29 2022  
SCT

## PROOF OF SERVICE

I am an employee in the County of Riverside. I am over the age of 18 years and not a party to the within entitled action; my business address is 25026 Las Brisas Road, Murrieta, California 92560.

On December 28, 2022, I served a copy of the following document(s) described as

**DECLARATION OF MARIAH GONDEIRO** on the interested party(ies) in this action as follows:

**SEE ATTACHED SERVICE LIST**

**BY E-MAIL OR ELECTRONIC TRANSMISSION.** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I transmitted copies of the above-referenced document(s) on the interested parties in this action by electronic transmission. Said electronic transmission reported as complete and without error.

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**BY PERSONAL SERVICE.** I caused copies of the above-referenced documents to the addressee(s) noted above served by process server.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am an employee in the office of a member of the bar of this Court who directed this service.

Dusan S Kenney

---

Susan Y. Kenney

1 **SERVICE LIST**

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3 James R. Williams, County Counsel  
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# Exhibit 2

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3 KARUN A. TILAK, Deputy County Counsel (S.B. #323939)  
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**Electronically Filed  
By Superior Court of CA,  
County of Santa Clara,  
on 12/30/2022 10:02 AM  
Reviewed By: R. Sandoval  
Case #20CV372285  
Envelope: 10818844**

9 Attorneys for Plaintiffs  
10 THE PEOPLE OF THE STATE OF  
11 CALIFORNIA, COUNTY OF SANTA CLARA,  
12 AND SARA H. CODY, M.D., IN HER OFFICIAL  
13 CAPACITY AS HEALTH OFFICER FOR THE  
14 COUNTY OF SANTA CLARA

**Exempt From Filing Fees  
Pursuant to Gov. Code, § 6103**

13 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA

15 THE PEOPLE OF THE STATE OF  
16 CALIFORNIA, COUNTY OF SANTA  
17 CLARA, and SARA H. CODY, M.D., in her  
18 official capacity as Health Officer for the  
19 County of Santa Clara,

20 Plaintiffs,

21 v.

22 CALvary CHAPEL SAN JOSE; MIKE  
23 MCCLURE, and DOES 1-50,

Defendants.

No. 20CV372285

**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' *EX PARTE* APPLICATION  
TO CONTINUE THE HEARING DATE  
FOR PLAINTIFFS' MOTION FOR  
SUMMARY ADJUDICATION**

Date: January 17, 2023  
Time: 11:00 a.m.  
Dept.: D7  
Judge: The Honorable Christopher Rudy

23 Defendants' ("Calvary") *ex parte* application to continue the summary judgment hearing date  
24 is a last-ditch attempt at forum shopping, brought only after the district court denied Calvary's  
25 December 8, 2022 motion to *advance* the summary judgment hearing date in the parallel federal  
26 case. The state and federal cases concern the same constitutional issues; and discovery has been  
27 formally coordinated in both proceedings. Yet Calvary makes no effort to reconcile the position it  
28 has taken here—that discovery is somehow insufficient for summary judgment—with its position in

1 the federal case—where Calvary itself moved for summary judgment three months ago and asked  
2 the Court to hear that motion on an accelerated schedule.

3 Calvary’s application fails to show good cause for any continuance of the January 17, 2023,  
4 hearing on the motion for summary adjudication filed by Plaintiffs The People of the State of  
5 California, County of Santa Clara, and Health Officer Sara H. Cody, M.D. (collectively, the  
6 “County”); and the application should be denied.

## 7 BACKGROUND

8 The parties have been litigating in parallel proceedings in this Court and the U.S. District  
9 Court for the Northern District for more than two years. (Declaration of Robin M. Wall [Wall Decl.]  
10 at ¶¶ 3-4.) The coordinated discovery in both proceedings has been extensive, with the County  
11 producing over 36,000 pages of documents, Calvary serving scores of interrogatories, and the parties  
12 taking over 20 depositions. (*Id.* at ¶¶ 5-6.)

13 While Calvary claims that summary judgment is somehow premature in this Court because  
14 they need additional discovery, that purported need did not prevent Calvary from filing its own  
15 motion for summary judgment *three months ago* in district court, on September 16, 2022; nor was  
16 discovery an impediment to Calvary’s own motion to advance the summary judgment hearing date  
17 in federal court from January 26, 2023, to a date before the hearing in this Court—a motion Judge  
18 Beth Labson Freeman denied. (*Id.* at ¶ 10, Ex. A.) Nor did Calvary raise its newfound discovery  
19 concerns—or any discovery concerns at all—when the parties previously briefed a request regarding  
20 the hearing date in this case two months ago. (*See id.* at ¶ 14.)

21 The real issue here is not discovery, but forum shopping—Calvary plainly wants the district  
22 court to hear their motion for summary judgment before this Court has a chance to rule on the  
23 County’s motion here, even though the district court has twice held that there are issues regarding  
24 the amount of the fines that need to be decided by this Court first. (*Id.* at ¶ 18.) The parties’ cross-  
25 motions for summary judgment are set to be heard in district court on January 26, 2023. Calvary  
26 asked the district court to advance that hearing date to a date before the January 17 hearing date in  
27 this case; and the district court denied the request. (*Id.* at ¶ 10, Ex. A) Having failed to change the  
28 district court’s schedule, Calvary now asks this Court for an open-ended continuance of the January

1 17 hearing date—not because they need to take any particular deposition (and the witness in  
2 question is available as early as January 3)—but because Calvary prefers the federal forum.

3 **ARGUMENT**

4 In order to demonstrate good cause for a continuance, Calvary must make a “good faith  
5 showing by affidavit that a continuance is needed to obtain facts essential to justify opposition to the  
6 motion.” (*Knapp v. Doherty* (2004) 123 Cal.App.4th 76, 100-101.) “To make the requisite good  
7 faith showing, an opposing party’s declaration must show (1) the facts to be obtained are essential to  
8 opposing the motion, (2) there is reason to believe such facts may exist, and (3) the reasons why  
9 additional time is needed to obtain these facts. (*Chavez v. 24 Hour Fitness USA, Inc.* (2015) 238  
10 Cal. App.4th 632, 643 [citing *Lerma v. County of Orange* (2004) 120 Cal.App.4th 709, 715].) This  
11 is an “exacting” standard and important to prevent abuse of Section 437c(h) of the California Code  
12 of Civil Procedure: “[t]he statute cannot be employed as a device to get an automatic continuance by  
13 every unprepared party who simply files a declaration stating that unspecified essential facts may  
14 exist.” (*Lerma v. Cty. of Orange* (2004) 120 Cal.App.4th 709, 715-16.) Calvary’s declaration does  
15 not meet that standard.

16 Calvary has not explained why additional time is needed for discovery. When deciding  
17 whether to continue summary judgment, courts consider a number of factors including “(1) how long  
18 the case has been pending; (2) how long the requesting party had to oppose the motion; (3) whether  
19 the continuance motion could have been made earlier; (4) the proximity of the trial date or the 30-  
20 day discovery cutoff before trial; (5) any prior continuances for the same reason; and (6) the question  
21 whether the evidence sought is truly essential to the motion.” (*Chavez, supra*, at p. 644 [citation  
22 omitted].) These factors weigh heavily against any continuance.

23 As an initial matter, this case has been pending for over two years—it was filed on October  
24 29, 2020. (Wall Decl. at ¶ 4.) And Calvary has had over four months to oppose the County’s  
25 motion, which was filed on August 26, 2022, and which included a declaration from enforcement  
26 officer Melissa Gonzalez (now Melissa Huerta) addressing, among other things, the November 9,  
27 2020 notice of violation (“NOV”). (*Id.* at ¶ 9.) If Calvary needed discovery regarding that NOV,  
28 which it received more than two years ago, and which was reproduced in discovery on June 17,

1 2022, it has had more than ample time to do so. (*Id.* at ¶ 7.) Moreover, while a trial date has not  
2 been set in this case, and discovery remains available, fact discovery is closed in the federal case and  
3 trial is set for May 2023. (*Id.* at ¶ 13.)

4 Additionally, Calvary’s application for a continuance plainly could have been made earlier.  
5 Again, this is Calvary’s second attempt to adjust the hearing schedule in the parallel state and federal  
6 proceedings. If there actually were a bona fide discovery issue concerning the County’s motion,  
7 Calvary could have asked this Court for a continuance weeks ago, instead of first asking the district  
8 court to advance the summary judgment hearing date in the federal case. (*See id.* at ¶ 10.)

9 Importantly, Calvary also has not explained why the facts it seeks are “essential” to its  
10 opposition. Calvary has not explained why “internal correspondence” related to “complaints  
11 regarding non-commercial activities” is necessary to its “affirmative defense.” (App. at 3). Calvary  
12 has not made any showing that such correspondence exists; and its declaration merely speculates that  
13 such “correspondence” “will reveal whether the complaints were in relation to religious non-  
14 commercial activities or secular activities.” (Gondeiro Decl. at ¶ 9.) But the County has already  
15 produced the complaints in question and so Calvary can already see what activities were at issue  
16 (Wall Decl. at ¶ 19); and again, there is no explanation regarding why any of this is relevant to any  
17 constitutional claim or defense. Calvary has not even specified which “affirmative defense” is  
18 purportedly at issue, nor has it provided any legal argument or authority to support its assertion.  
19 Indeed, it is not clear how any discovery could be “essential” at this point, given that the majority of  
20 Calvary’s constitutional arguments are foreclosed by res judicata. As the County has argued here  
21 and in the district court, this Court has already considered and *rejected* Calvary’s constitutional  
22 arguments in an April 8, 2021 final judgment on the merits arising out of an earlier proceeding  
23 initiated by Calvary. (Wall Decl. at ¶¶ 20.)

24 Calvary has also failed to explain the sudden need for the deposition of enforcement officer  
25 Ms. Huerta regarding a notice of violation issued to Calvary Chapel over two years ago on  
26 November 9, 2020. (App. at 4.) Ms. Huerta has already stated in her declaration filed in support of  
27 the County’s motion that she visited Calvary on November 9, observed face covering violations, and  
28 prepared and issued the NOV. (Aug. 26, 2022 Declaration of Melissa Gonzalez, ¶ 21.) Calvary

1 does not identify what additional information it could possibly need from Ms. Huerta, particularly  
2 given that it has never disputed the violations at issue. While it is true that Ms. Huerta's December  
3 21 deposition had to be continued due to illness (she is currently available on January 3-5 for  
4 deposition), Calvary has made no effort whatsoever to explain why the deposition could not have  
5 been taken earlier—for example, at any time in the 18 months before fact discovery closed in the  
6 federal case on October 28, 2022. (See Wall Decl. at ¶ 13.) Indeed, the parties stipulated at the  
7 beginning of October to extend the fact discovery deadline in the federal case expressly to permit  
8 Calvary to schedule and take Ms. Huerta's deposition—which Calvary decided not to pursue. (*Id.*)

9 If there has been any delay in deposing Ms. Huerta, the fault lies with Calvary. In September  
10 2022, counsel for the County emailed counsel for Calvary to offer dates for the depositions for Ms.  
11 Huerta and Beatrice Santiago, Ms. Huerta's supervisor. (Wall Decl. ¶ 11, Ex. B [Sept. 26, 2022  
12 email exchange].) But at that time, counsel for Calvary made the strategic decision not to take Ms.  
13 Huerta's deposition, and instead proceeded with Ms. Santiago's deposition. (*Id.* [indicating that  
14 Calvary intended to proceed with Ms. Santiago's deposition and "will then assess whether Ms.  
15 Huerta . . . [was] needed"].) At Ms. Santiago's deposition, which occurred on October 7, 2022,  
16 counsel for Calvary questioned Ms. Santiago about the November 9, 2020 NOV. (Wall Decl. ¶ 12.)  
17 Calvary's counsel then waited two months—until December 6, 2022—to request Ms. Huerta's  
18 deposition. (Wall Decl. ¶ 15.) Unfortunately, Ms. Huerta's December 21 deposition had to be  
19 postponed due to illness. (Wall Decl. ¶ 16.) Counsel offered to make Ms. Huerta available for  
20 deposition on January 3, 4, and 5, but have not heard back from Calvary's counsel, notwithstanding  
21 the supposed necessity for her deposition. (*Id.*)

22 Moreover, Ms. Huerta has already testified multiple times regarding Calvary's violations of  
23 the public health orders: she testified at an October 21, 2020 administrative proceeding before the  
24 Office of the County Hearing Officer with Calvary's counsel present; she testified and was cross-  
25 examined by Calvary's counsel at a January 14, 2021 contempt hearing in this case; and she has  
26 submitted numerous declarations in the course of the state and federal proceedings, including  
27 declarations that speak to the November 9, 2020 NOV. (Wall Decl. ¶ 17.) The notion that Calvary  
28 has questions for Ms. Huerta that went overlooked for two years, but are now so important as to

1 delay the case, is absurd.

2 Finally, whatever information Ms. Huerta might have is not “unique.” (Compare *Chavez*,  
3 *supra*, 238 Cal. App.4th at p. 643-44 [noting witness possessed “unique knowledge”].) As noted  
4 above, Calvary has had the opportunity to depose Ms. Huerta’s supervisor about the November 9,  
5 2020 NOV; and Calvary has also had the opportunity to depose Michael Balliet, who oversaw the  
6 County’s Business Compliance Unit, which was responsible for COVID-19 enforcement. (Wall  
7 Decl. ¶ 8.)

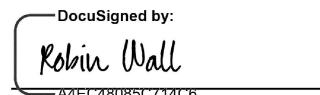
8 In sum, the Court should not allow Calvary to delay summary adjudication because of  
9 purported factual issues they have long been aware of and have had ample opportunity to explore  
10 through discovery. Calvary’s application should be denied.

11 Dated: December 30, 2022

Respectfully submitted,

12 JAMES R. WILLIAMS  
13 County Counsel

14 By:

15   
16 ROBIN M. WALL  
17 Deputy County Counsel

18 Attorneys for Plaintiffs  
19 THE PEOPLE OF THE STATE OF  
20 CALIFORNIA, COUNTY OF SANTA  
21 CLARA, AND SARA H. CODY, M.D., IN  
22 HER OFFICIAL CAPACITY AS HEALTH  
23 OFFICER FOR THE COUNTY OF SANTA  
24 CLARA

25 2755936

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1 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA

2 PROOF OF SERVICE BY ELECTRONIC MAIL

3

4 *The People of the State of California, et al. v. Calvary Chapel* Case No.: 20CV372285  
San Jose, et al.

5

6 I, Avril D'Souza, declare:

7 I am now and at all times herein mentioned have been over the age of eighteen years,  
8 employed in Santa Clara County, California, and not a party to the within action or cause; that my  
9 business address is 70 West Hedding Street, 9<sup>th</sup> Floor, San José, California 95110-1770. My  
10 electronic service address is: [avril.dsouza@cco.sccgov.org](mailto:avril.dsouza@cco.sccgov.org). On **December 30, 2022**, I electronically  
11 served copies of the following:

12 **PLAINTIFFS' OPPOSITION TO DEFENDANTS' EX PARTE APPLICATION TO  
13 CONTINUE THE HEARING DATE FOR PLAINTIFFS' MOTION FOR SUMMARY  
ADJUDICATION**

14 to the people listed below at the following electronic service address:

15 NATIONAL CENTER FOR LAW & POLICY  
16 Dean R. Broyles  
Email: [dbroyles@nclplaw.org](mailto:dbroyles@nclplaw.org)

17 ADVOCATES FOR FAITH & FREEDOM  
18 Mariah Gondeiro  
Email: [mgondeiro@faith-freedom.com](mailto:mgondeiro@faith-freedom.com)  
19 Robert H. Tyler  
Email: [btyler@faith-freedom.com](mailto:btyler@faith-freedom.com)  
20 Sue Kenney  
Email: [skenney@faith-freedom.com](mailto:skenney@faith-freedom.com)

21 TYLER & BURSCH, LLP  
22 Shelly Padilla  
Email: [spadilla@tylerbursch.com](mailto:spadilla@tylerbursch.com)

23 I declare under penalty of perjury under the laws of the State of California that the foregoing  
24 is true and correct, and that this declaration was executed on **December 30, 2022** in San José,  
25 California.

26 DocuSigned by:  
27   
28 Avril D'Souza

R. Sandoval

1 JAMES R. WILLIAMS, County Counsel (S.B. #271253)  
2 MELISSA R. KINIYALOCTS, Lead Deputy County Counsel (S.B. #271253)  
3 KARUN A. TILAK, Deputy County Counsel (S.B. #323939)  
4 JAMILA G. BENKATO, Deputy County Counsel (S.B. #313646)  
5 ROBIN M. WALL, Deputy County Counsel (S.B. #235690)  
6 OFFICE OF THE COUNTY COUNSEL  
7 70 West Hedding Street, East Wing, Ninth Floor  
8 San José, California 95110-1770  
9 Telephone: (408) 299-5900  
10 Facsimile: (408) 292-7240  
11 [melissa.kiniyalocots@cco.sccgov.org](mailto:melissa.kiniyalocots@cco.sccgov.org)  
12 [karun.tilak@cco.sccgov.org](mailto:karun.tilak@cco.sccgov.org)  
13 [jamila.benkato@cco.sccgov.org](mailto:jamila.benkato@cco.sccgov.org)  
14 [robin.wall@cco.sccgov.org](mailto:robin.wall@cco.sccgov.org)

**Electronically Filed  
By Superior Court of CA,  
County of Santa Clara,  
on 12/30/2022 10:02 AM  
Reviewed By: R. Sandoval  
Case #20CV372285  
Envelope: 10818844**

9 Attorneys for Plaintiffs  
10 THE PEOPLE OF THE STATE OF  
11 CALIFORNIA, COUNTY OF SANTA CLARA,  
12 AND SARA H. CODY, M.D., IN HER OFFICIAL  
13 CAPACITY AS HEALTH OFFICER FOR THE  
14 COUNTY OF SANTA CLARA

**Exempt From Filing Fees  
Pursuant to Gov. Code, § 6103**

15 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA

16 THE PEOPLE OF THE STATE OF  
17 CALIFORNIA, COUNTY OF SANTA CLARA,  
18 and SARA H. CODY, M.D., in her official  
19 capacity as Health Officer for the County of  
20 Santa Clara,

21 Plaintiffs,

22 v.

23 CALVARY CHAPEL SAN JOSE; MIKE  
24 MCCLURE, and DOES 1-50,

25 Defendants.

No. 20CV372285

**DECLARATION OF ROBIN M. WALL IN  
SUPPORT OF PLAINTIFFS' OPPOSITION  
TO DEFENDANTS' EX PARTE  
APPLICATION TO CONTINUE THE  
HEARING DATE FOR PLAINTIFFS'  
MOTION FOR SUMMARY  
ADJUDICATION**

Date: January 17, 2023  
Time: 11:00 a.m.  
Dept.: D7  
Judge: The Honorable Christopher Rudy

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## DECLARATION OF ROBIN M. WALL

I, ROBIN M. WALL, declare:

1. I am a Deputy County Counsel for the County of Santa Clara, attorneys of record herein for the Plaintiffs the People of the State of California, the County of Santa Clara, and the County's Health Officer, Dr. Sarah H. Cody. I make this declaration in support of Plaintiffs' Opposition to Defendants' Ex Parte Application to Continue the Hearing Date for Plaintiffs' Motion for Summary Adjudication.

2. I know the facts herein stated of my own personal knowledge and if called upon to do so, I could competently testify to them under oath.

3. On June 9, 2020, Calvary Chapel San Jose, Mike McClure, and two other plaintiffs filed suit against a number of County officials in the U.S. District Court for the Northern District of California, challenging the County’s public health orders related to the COVID-19 pandemic. The operative complaint, the Fourth Amended Complaint, was filed on April 15, 2022, and the case is captioned *Calvary Chapel San Jose, et al. v. County of Santa Clara*, Case No. 5:20-cv-03794. The case is currently pending before U.S. District Judge Beth Labson Freeman, with a hearing on the parties’ cross motions for summary judgment set for January 26, 2023. Both cross-motions are styled as partial motions for summary judgment.

4. On October 29, 2020, the Plaintiffs in this case filed suit against Calvary Chapel San Jose and Mike McClure (collectively, “Calvary”) to enforce the COVID-19 public health orders.

5. The parties filed stipulations for the cross-use of discovery in both cases to avoid duplicative discovery and coordinate their discovery efforts. This Court issued an order on the parties' stipulation on July 11, 2022, The District Court issued a similar order on July 8, 2022.

6. The discovery in both proceedings has been extensive. The County has produced over 36,000 pages of documents; Calvary has served—and the County has responded to—scores of interrogatories; and the parties have taken over 20 depositions.

7. On June 17, 2022, the County produced copies of all of the notices of violation (“NOVs”) that had been issued to Calvary in connection with its violation of the COVID-19 public health orders and directives. Those NOVs included the November 9, 2022 NOV, which was

1 produced at Bates numbers CCO\_Calvary\_032387 to CCO\_Calvary\_032290.

2       8. On July 21, 2022, Calvary's counsel deposed Michael Balliet, who testified that in  
3 August 2020 he was the Director of the County's Community and Business Engagement Unit, and in  
4 that role he oversaw the Business Compliance Unit, which was responsible for COVID-19  
5 enforcement.

6       9. On August 26, 2022, the County filed its motion for summary adjudication. In  
7 support of that motion, the County filed a number of declarations, including the Declaration of  
8 Melissa Gonzalez (who now goes by Melissa Huerta). Both the County's motion and Ms. Huerta's  
9 declaration address the November 9, 2020 NOV.

10      10. Calvary filed a partial motion for summary judgment in the federal case on  
11 September 16, 2022. Then, on December 8, 2022, Calvary filed a motion to advance the hearing  
12 date on its motion for summary judgment from January 26, 2023 to "a date no later than January 16,  
13 2023." The District Court denied the motion by order dated December 13, 2022. A true and correct  
14 copy of that order is attached as **Exhibit A**.

15      11. On September 26, 2022, my colleague Karun Tilak wrote to Calvary counsel Mariah  
16 Gondeiro to confirm deposition dates for three County employees, including Ms. Huerta and her  
17 supervisor, Beatrice Santiago. Ms. Gondeiro responded that same day, confirming the date for Ms.  
18 Santiago's deposition and then writing: "We will send a notice of deposition. We will then assess  
19 whether Ms. Huerta and Ms. Sircar are needed." A true and correct copy of that email exchange is  
20 attached as **Exhibit B**.

21      12. Ms. Santiago's deposition went forward on October 7, 2022. The November 9, 2020  
22 NOV was marked as Exhibit 4 to the deposition, and Calvary's counsel asked Ms. Santiago  
23 questions about it.

24      13. Fact discovery was scheduled to close in the federal case on October 7, 2022. On  
25 October 4, 2022, the parties stipulated to extend the fact discovery deadline to October 28, 2022, to  
26 allow the parties to take the depositions of six individuals, including Ms. Huerta. On October 6,  
27 2022, the District Court entered an order granting the parties' stipulation. A true and correct copy of  
28 that order is attached as **Exhibit C**.

1       14. On October 28, 2022, the County filed an ex parte application to advance the hearing  
2 date on its motion for summary adjudication. That same day, Calvary filed its opposition to the  
3 application.

4       15. On December 6, 2022, Ms. Gondeiro requested deposition dates for Ms. Huerta and  
5 another enforcement officer. Ms. Huerta's deposition was scheduled for December 21, 2022.

6       16. On December 19, 2022, my colleague Jamila Benkato informed Ms. Gondeiro via  
7 email that Ms. Huerta was ill and could not participate in the deposition. Due to the holidays and the  
8 availability of counsel, Ms. Benkato proposed rescheduling Ms. Huerta's deposition for January 3, 4,  
9 or 5. To date, Calvary's counsel has not confirmed a new date for Ms. Huerta's deposition.

10       17. Ms. Huerta has previously testified regarding her enforcement activities and  
11 Calvary's violations of the public health orders: she testified at an October 21, 2020 administrative  
12 proceeding before the Office of the County Hearing Officer with Calvary's counsel present; she  
13 testified and was cross-examined by Calvary's counsel at a January 14, 2021 contempt hearing in  
14 this case; and she has submitted numerous declarations in the course of the state and federal  
15 proceedings, including the declaration submitted in support of the County's pending summary  
16 adjudication motion that addresses the November 9, 2020 NOV.

17       18. The District Court has twice held that it cannot rule on the alleged excessiveness of the  
18 fines under the Eighth Amendment until this Court decides the amount of the fines. (See *Calvary*  
19 *Chapel San Jose, et al. v. County of Santa Clara*, Case No. 5:20-cv-03794, ECF 156 [Order on  
20 Motions to Dismiss] at 24; ECF 178 [Order dated May 26, 2022] at 7-8.)

21       19. On November 14, 2022, the County produced a spreadsheet to Calvary that lists the  
22 complaints received by the County relating to "non-commercial" activity (Bates Nos.  
23 CCO\_Calvary\_036200 to CCO\_Calvary\_036203. That spreadsheet includes a column titled  
24 "DESCRIPTION\_OF\_COMPLAINT" that contains each of the complaints submitted to the  
25 County—*i.e.*, the complainants' respective descriptions of the alleged violations being reported.

26       20. The County has argued in both its motion for summary adjudication in this Court and  
27 in the summary judgment briefing in the District Court that Calvary's constitutional claims and  
28 defenses—except as to capacity restrictions and singing—are barred as a matter of res judicata by

1 this Court's April 8, 2021 decision that considered and rejected Calvary's constitutional arguments.  
2 (See *Calvary Chapel San Jose, et al. v. County of Santa Clara*, Case No. 5:20-cv-03794, ECF 253  
3 [County's Motion for Partial Summary Judgment] at pp. 7-12; ECF 238 [Opposition to Calvary's Motion  
4 for Partial Summary Judgment] at pp. 7-10; *People of the State of California, et al. v. Calvary Chapel*  
5 *San Jose, et al.*, No. 20CV372285, Memorandum of Points and Authorities in Support of Plaintiffs'  
6 Motion for Summary Adjudication at pp. 12, 15, 17, 19 n.11, 20, 21.)

7 I declare under penalty of perjury under the laws of the State of California that the foregoing  
8 is true and correct.

9 Executed on December 30, 2022 at San José, California.

10  
11 DocuSigned by:  
12   
13 ROBIN M. WALL  
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16 2755652  
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# EXHIBIT A

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CALVARY CHAPEL SAN JOSE, et al.,  
Plaintiffs,  
v.  
SARA CODY, et al.,  
Defendants.

Case No. 20-cv-03794-BLF

**ORDER DENYING PLAINTIFFS'  
ADMINISTRATIVE MOTION TO  
CHANGE TIME**

United States District Court  
Northern District of California

13 Before the Court is Plaintiffs Calvary Chapel San Jose and Pastor Mike McClure's  
14 (together "Calvary") request under Civil Local Rules 6-3 and 7-11 to advance the hearing date on  
15 Plaintiffs' Partial Motion for Summary Judgment and Defendant Santa Clara County's Motion to  
16 Stay and to Dismiss Plaintiffs' Claims. Mot., ECF No. 247. Defendant Santa Clara County  
17 opposes. Opp'n, ECF No. 249.

18 Plaintiffs' motion to change time is hereby DENIED for three reasons. First, the Court's  
19 calendars are full. Second, even if the oral argument were advanced, the Court would not be able  
20 to render a decision before the January 17 hearing date in state court. Third, the Court finds that  
21 judicial economy would be best served by deciding Defendants' motion to dismiss before  
22 Plaintiffs' motion for partial summary judgment.

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Dated: December 13, 2023

  
BETH LABSON FREEMAN  
United States District Judge

# EXHIBIT B

---

**Wall, Robin**


---

**From:** Mariah Gondeiro <[mgondeiro@tylerbursch.com](mailto:mgondeiro@tylerbursch.com)>  
**Sent:** Monday, September 26, 2022 11:54 AM  
**To:** Tilak, Karun  
**Cc:** Wall, Robin; Brandwajn, Xavier; Kiniyalocots, Melissa; Benkato, Jamila; LoPresti, Tony; Sue Kenney - Advocates  
**Subject:** [EXTERNAL] RE: Enforcement Officer and Beatrice Santiago Depositions

Good morning,

We can accommodate Ms. Santiago for a remote deposition on October 7, 2022. We will send a notice of deposition. We will then assess whether Ms. Huerta and Ms. Sircar are needed.

To confirm, Beatrice Santiago is a supervisor, correct?

Mariah

---

**From:** Tilak, Karun <[karun.tilak@cco.sccgov.org](mailto:karun.tilak@cco.sccgov.org)>  
**Sent:** Monday, September 26, 2022 11:25 AM  
**To:** Mariah Gondeiro <[mgondeiro@tylerbursch.com](mailto:mgondeiro@tylerbursch.com)>  
**Cc:** Wall, Robin <[robin.wall@cco.sccgov.org](mailto:robin.wall@cco.sccgov.org)>; Brandwajn, Xavier <[xavier.brandwajn@cco.sccgov.org](mailto:xavier.brandwajn@cco.sccgov.org)>; Kiniyalocots, Melissa <[Melissa.Kiniyalocots@cco.sccgov.org](mailto:Melissa.Kiniyalocots@cco.sccgov.org)>; Benkato, Jamila <[jamila.benkato@cco.sccgov.org](mailto:jamila.benkato@cco.sccgov.org)>; LoPresti, Tony <[tony.lopresti@cco.sccgov.org](mailto:tony.lopresti@cco.sccgov.org)>  
**Subject:** RE: Enforcement Officer and Beatrice Santiago Depositions

Good Morning Mariah,

I wanted to follow up on the below. Ms. Santiago, Ms. Huerta, and Ms. Sircar are holding the dates referenced in my below email, but they have busy schedules. We'd appreciate a prompt response so we can confirm their deposition dates.

Thanks,



Karun Tilak | Deputy County Counsel  
 Office of the County Counsel, County of Santa Clara  
 70 West Hedding Street, East Wing, 9<sup>th</sup> Floor | San José, CA 95110  
 Office: (408) 299-5936 | Mobile: (669) 287-9076  
[karun.tilak@cco.sccgov.org](mailto:karun.tilak@cco.sccgov.org) | [counsel.sccgov.org](http://counsel.sccgov.org)

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---

**From:** Tilak, Karun  
**Sent:** Thursday, September 22, 2022 3:17 PM  
**To:** Mariah Gondeiro <[mgondeiro@tylerbursch.com](mailto:mgondeiro@tylerbursch.com)>  
**Cc:** Wall, Robin <[robin.wall@cco.sccgov.org](mailto:robin.wall@cco.sccgov.org)>; Brandwajn, Xavier <[xavier.brandwajn@cco.sccgov.org](mailto:xavier.brandwajn@cco.sccgov.org)>; Kiniyalocots, Melissa <[Melissa.Kiniyalocots@cco.sccgov.org](mailto:Melissa.Kiniyalocots@cco.sccgov.org)>; Benkato, Jamila <[jamila.benkato@cco.sccgov.org](mailto:jamila.benkato@cco.sccgov.org)>; LoPresti, Tony <[tony.lopresti@cco.sccgov.org](mailto:tony.lopresti@cco.sccgov.org)>  
**Subject:** Enforcement Officer and Beatrice Santiago Depositions

Hi Mariah,

I write in regards to the deposition availability of Beatrice Santiago, Melissa Huerta (previously Gonzalez), and Anjani Sircar.

Ms. Santiago is available on October 7 for remote deposition.

Ms. Huerta and Ms. Sircar are not available the week of Oct. 3-7. We would propose October 12 for Ms. Sircar's deposition, and October 13 for Ms. Huerta's deposition. Please let us know if those dates work for you. We would be willing to stipulate to extend the fact discovery deadline for the limited purpose of completing these two depositions.

Sincerely,



Karun Tilak | Deputy County Counsel  
Office of the County Counsel, County of Santa Clara  
70 West Hedding Street, East Wing, 9<sup>th</sup> Floor | San José, CA 95110  
Office: (408) 299-5936 | Mobile: (669) 287-9076  
[karun.tilak@cco.sccgov.org](mailto:karun.tilak@cco.sccgov.org) | [counsel.sccgov.org](mailto:counsel.sccgov.org)

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# EXHIBIT C

1 JAMES R. WILLIAMS, County Counsel (S.B. #271253)  
2 MELISSA R. KINIYALOCTS, Lead Deputy County Counsel (S.B. #215814)  
3 ROBIN M. WALL, Deputy County Counsel (S.B. #235690)  
4 XAVIER M. BRANDWAJN, Deputy County Counsel (S.B. #246218)  
5 OFFICE OF THE COUNTY COUNSEL  
6 70 West Hedding Street, East Wing, Ninth Floor  
7 San José, California 95110-1770  
8 Telephone: (408) 299-5900  
9 Facsimile: (408) 292-7240

10 Attorneys for Defendants  
11 COUNTY OF SANTA CLARA, SARA H. CODY,  
12 M.D., MIKE WASSERMAN, CINDY CHAVEZ,  
13 OTTO LEE, SUSAN ELLENBERG, JOE  
14 SIMITIAN and JAMES R. WILLIAMS

15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 (San José Division)

18 CALVARY CHAPEL SAN JOSE, et al.,

19 No. 20-CV-03794 BLF (VKD)

20 Plaintiffs,

21 v.  
22 **JOINT STIPULATION TO EXTEND FACT  
23 DISCOVERY DEADLINE; [PROPOSED]  
24 ORDER**

25 COUNTY of SANTA CLARA, et al.,

26 Defendants.

27 **JOINT STIPULATION**

28 Pursuant to Civil Local Rule 6-2, the parties hereby agree and stipulate to the following  
extension of the fact discovery deadline in the above-captioned matter for the sole purpose of  
conducting certain depositions.

WHEREAS the current deadline for fact discovery as stipulated to by the parties and ordered  
by the Court on April 9, 2021 (ECF 83) is October 7, 2022;

WHEREAS the parties have engaged in reasonably diligent efforts to complete discovery,  
but have been unable to complete the depositions of the following individuals due to the availability  
of the deponents and counsel, as well as the recent disclosure of the four (4) declarants in support of  
Plaintiffs' September 16, 2022, Partial Motion for Summary Judgment (PMSJ):

- Melissa Huerta (County employee)
- Anjani Sircar (County employee)
- Roger Gliebe (Declarant in support of PMSJ)
- William Shepherd (Declarant in support of PMSJ)
- Anne Stenehjem (Declarant in support of PMSJ)
- Megan Fraboni (Declarant in Support of PMSJ)

WHEREAS the parties agree to extend the deadline for fact discovery to October 28, 2022 for the sole purpose of conducting these six depositions;

WHEREAS there is good cause to extend the fact discovery deadline to conduct these six depositions in order to accommodate the schedules of the deponents and counsel;

WHEREAS the parties have previously stipulated to and otherwise sought modifications to briefing schedules, filing and response deadlines, and the ADR deadline (e.g., ECF 52, 77, 100, 103, 107, 118, 142, 148, 169, 181, and 216); and

WHEREAS the parties do not expect the agreed-upon extension to affect the overall schedule for the case apart from the fact discovery deadline.

Accordingly, for good cause shown, the above-named parties stipulate and respectfully request the Court enter an order extending the fact discovery deadline as set forth above and in the proposed order submitted herewith.

IT IS SO STIPULATED.

Dated: October 4, 2022

JAMES R. WILLIAMS  
County Counsel

By: /s/ Robin M. Wall  
ROBIN M. WALL  
Deputy County Counsel

## Attorneys for Defendants

Dated: October 4, 2022

## TYLER & BURSCH, LLP

By: /s/ Mariah Gondeiro  
MARIAH GONDEIRO  
Attorneys for Plaintiffs

## CERTIFICATION

Pursuant to Civil Local Rule 5-1(i)(3), I attest that the concurrence of Mariah Gondeiro in the filing of this stipulation has been obtained.

Dated: October 4, 2022

By: /s/ Robin M. Wall  
ROBIN M. WALL  
Deputy County Counsel

**[PROPOSED] ORDER**

The Court, having reviewed the parties' Joint Stipulation, and good cause appearing therefor, IT IS HEREBY ORDERED that the deadline for fact discovery is extended to October 28, 2022 for the sole purpose of conducting the depositions of Melissa Huerta, Anjani Sircar, Roger Gliebe, William Shepherd, Anne Stenehjem, and Megan Fraboni.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: October 6, 2022

Beth Labson Freeman  
The Honorable Beth Labson Freeman  
United States District Judge

2712917

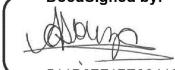
## 1 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA

2 PROOF OF SERVICE BY ELECTRONIC MAIL3  
4 *The People of the State of California, et al. v. Calvary Chapel* Case No.: 20CV372285  
5 *San Jose, et al.*

6 I, Avril D'Souza, declare:

7 I am now and at all times herein mentioned have been over the age of eighteen years,  
8 employed in Santa Clara County, California, and not a party to the within action or cause; that my  
9 business address is 70 West Hedding Street, 9<sup>th</sup> Floor, San José, California 95110-1770. My  
10 electronic service address is: [avril.dsouza@cco.sccgov.org](mailto:avril.dsouza@cco.sccgov.org). On **December 30, 2022**, I electronically  
11 served copies of the following:12 **DECLARATION OF ROBIN M. WALL IN SUPPORT OF PLAINTIFFS' OPPOSITION TO  
13 DEFENDANTS' EX PARTE APPLICATION TO CONTINUE THE HEARING DATE FOR  
14 PLAINTIFFS' MOTION FOR SUMMARY ADJUDICATION**

15 to the people listed below at the following electronic service address:

16 NATIONAL CENTER FOR LAW & POLICY  
17 Dean R. Broyles  
18 Email: [dbroyles@nclplaw.org](mailto:dbroyles@nclplaw.org)19 ADVOCATES FOR FAITH & FREEDOM  
20 Mariah Gondeiro  
21 Email: [mgondeiro@faith-freedom.com](mailto:mgondeiro@faith-freedom.com)  
22 Robert H. Tyler  
23 Email: [btyler@faith-freedom.com](mailto:btyler@faith-freedom.com)  
24 Sue Kenney  
25 Email: [skenney@faith-freedom.com](mailto:skenney@faith-freedom.com)26 TYLER & BURSCH, LLP  
27 Shelly Padilla  
28 Email: [spadilla@tylerbursch.com](mailto:spadilla@tylerbursch.com)29 I declare under penalty of perjury under the laws of the State of California that the foregoing  
30 is true and correct, and that this declaration was executed on **December 30, 2022** in San José,  
31 California.32 DocuSigned by:  
33   
34 511B67F17E80419...

35 Avril D'Souza

# Exhibit 3

**From:** [no-reply@efilingmail.tylertech.cloud](mailto:no-reply@efilingmail.tylertech.cloud)  
**To:** [Wall, Robin](mailto:Wall, Robin)  
**Subject:** [EXTERNAL] Courtesy Notification of filing for Case No. 20CV372285 (THE PEOPLE OF THE STATE OF CALIFORNIA et al vs CALVARY CHAPEL SAN JOSE et al)  
**Date:** Tuesday, January 3, 2023 11:03:54 AM

---

## Courtesy Notification

Envelope Number: **10818844**

This is a courtesy notification for the filing listed. Please click the link below to retrieve the submitted document.

Filing Details	
<b>Case Number</b>	20CV372285
<b>Case Style</b>	THE PEOPLE OF THE STATE OF CALIFORNIA et al vs CALVARY CHAPEL SAN JOSE et al
<b>Court</b>	Santa Clara Superior Court
<b>Date/Time Submitted</b>	12/30/2022 10:02 AM PST
<b>Filing Type</b>	Opposition
<b>Activity Requested</b>	EFile
<b>Filed By</b>	Avril D'Souza

Document Details	
<b>Lead File</b>	Opposition to Ex Parte Application.pdf
<b>Lead File Page Count</b>	7
<b>File Stamped Copy</b>	<a href="#">View Stamped Document</a> This link is active for 365 days.



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**From:** [no-reply@efilingmail.tylertech.cloud](mailto:no-reply@efilingmail.tylertech.cloud)  
**To:** [Wall, Robin](mailto:Wall, Robin)  
**Subject:** [EXTERNAL] Courtesy Notification of filing for Case No. 20CV372285 (THE PEOPLE OF THE STATE OF CALIFORNIA et al vs CALVARY CHAPEL SAN JOSE et al)  
**Date:** Tuesday, January 3, 2023 11:03:53 AM

---

## Courtesy Notification

Envelope Number: **10818844**

This is a courtesy notification for the filing listed. Please click the link below to retrieve the submitted document.

Filing Details	
<b>Case Number</b>	20CV372285
<b>Case Style</b>	THE PEOPLE OF THE STATE OF CALIFORNIA et al vs CALVARY CHAPEL SAN JOSE et al
<b>Court</b>	Santa Clara Superior Court
<b>Date/Time Submitted</b>	12/30/2022 10:02 AM PST
<b>Filing Type</b>	Declaration: In Support
<b>Activity Requested</b>	EFile
<b>Filed By</b>	Avril D'Souza

Document Details	
<b>Lead File</b>	Decl. of RMW ISO County's Opp to Def's Ex-Parte Motion.pdf
<b>Lead File Page Count</b>	15
<b>File Stamped Copy</b>	<a href="#">View Stamped Document</a> This link is active for 365 days.



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# Exhibit 4

DEC 20 2022

1 ADVOCATES FOR FAITH & FREEDOM  
 2 Robert H. Tyler, State Bar No. 179572  
 3 rtyler@faith-freedom.com  
 4 Mariah R. Gondeiro, State Bar No. 323683  
 5 mgondeiro@faith-freedom.com  
 6 25026 Las Brisas Road  
 7 Murrieta, California 92562  
 Telephone: (951) 600-2733  
 Facsimile: (951) 600-4996

8 Attorneys for Defendants Calvary Chapel San Jose and  
 9 Mike McClure

10

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 12 FOR THE COUNTY OF SANTA CLARA

13 THE PEOPLE OF THE STATE OF  
 14 CALIFORNIA, COUNTY OF SANTA  
 15 CLARA, and SARA H. CODY, M.D., in her  
 16 official capacity as Health Officer for the  
 17 County of Santa Clara,

18 Plaintiffs,

19 v.

20 CALVARY CHAPEL SAN JOSE, MIKE  
 21 McCLOURE; and DOES 1-501-50, inclusive,

22 Defendants.

23 Case No.: 20CV372285

24 **PROPOSED ORDER GRANTING  
 25 DEFENDANTS' EX PARTE  
 APPLICATION FOR ORDER  
 EXTENDING TIME TO HEAR MOTION  
 FOR SUMMARY ADJUDICATION**

26 Date: December 30, 2022

27 Time: 8:30 a.m.

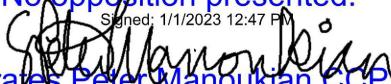
28 Dept.: D7

Judge: The Honorable Christopher Rudy

29 The application of Mike McClure and Calvary Chapel San Jose (collectively "Defendants")  
 30 for an order extending time to hear the motion for summary adjudication came for an *ex parte*  
 31 hearing on December 30, 2022, at 8:15 a.m., in Department D7 of the above-captioned Court,  
 32 located at 191 North 1<sup>st</sup> Street, San Jose, California 95113.

33 Based upon the papers submitted and argument of counsel, the Court finds there is good  
 34 cause to extend time on the hearing date on Plaintiffs' Motion for Partial Summary Adjudication.  
 35 The request is GRANTED and the hearing date is extended to 30 March, 2023, at 9:00 am  
 36 in Department 6. All remaining papers per code. No opposition presented.

37 Dated: 01 January 2023

38   
 Socrates Peter Manoukian CCP 635

39 HONORABLE CHRISTOPHER G. RUDY



# Exhibit 5

**From:** [Wall, Robin](#)  
**To:** [Mariah Gondeiro](#); [Tilak, Karun](#); [smanoukian@scscourt.org](mailto:smanoukian@scscourt.org); [department20@scscourt.org](mailto:department20@scscourt.org); [Department 7](#); [department3@scscourt.org](mailto:department3@scscourt.org)  
**Cc:** [Kiniyalocots, Melissa](#); [Benkato, Jamila](#); [Sue Kenney](#)  
**Subject:** RE: People v. Calvary Chapel (20cv372285): Order re: Defendants' Request for Continuance  
**Date:** Tuesday, January 3, 2023 12:40:00 PM  
**Attachments:** [image001.png](#)  
[EXTERNAL People v. Calvary Chapel San Jose.msg](#)

---

Dear Judge Manoukian,

We appreciate your time on this matter and particularly the fact that you were working on New Year's Day, although it appears that the opposition papers that the People filed on Friday, December 30 at 10 a.m. did not find their way to your desk. Hopefully that error can be addressed.

I do not wish to prolong this email exchange, but, unfortunately, I need to correct the record regarding Calvary's communication with the People's counsel. Ms. Gondeiro did not call me on December 29 at 10:35 a.m. She did not call me until the next day. I have reviewed my telephone records, and those records reflect only one call from Ms. Gondeiro and that is a 7-minute call on December 30, beginning at 10:34 a.m.

The People's counsel were given no notice of the December 29 filing. The last communication we received on December 29 was at 10:28 a.m., when counsel's office informed us via email that the ex parte application "will be submitted to the court Friday morning." (Attached.)

Best regards,



Robin M. Wall | Deputy County Counsel  
Office of the County Counsel, County of Santa Clara  
70 West Hedding Street, East Wing, 9<sup>th</sup> Floor | San José, CA 95110  
Office: (408) 299-9033  
Pronouns: he/him/his  
[robin.wall@cco.sccgov.org](mailto:robin.wall@cco.sccgov.org) | [counsel.sccgov.org](http://counsel.sccgov.org)

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---

**From:** Mariah Gondeiro <[mgondeiro@tylerbursch.com](mailto:mgondeiro@tylerbursch.com)>  
**Sent:** Tuesday, January 3, 2023 11:56 AM  
**To:** Tilak, Karun <[karun.tilak@cco.sccgov.org](mailto:karun.tilak@cco.sccgov.org)>; [smanoukian@scscourt.org](mailto:smanoukian@scscourt.org); [department20@scscourt.org](mailto:department20@scscourt.org); Department 7 <[Department7@scscourt.org](mailto:Department7@scscourt.org)>; [department3@scscourt.org](mailto:department3@scscourt.org)  
**Cc:** Kiniyalocots, Melissa <[Melissa.Kiniyalocots@cco.sccgov.org](mailto:Melissa.Kiniyalocots@cco.sccgov.org)>; Wall, Robin <[robin.wall@cco.sccgov.org](mailto:robin.wall@cco.sccgov.org)>; Benkato, Jamila <[jamila.benkato@cco.sccgov.org](mailto:jamila.benkato@cco.sccgov.org)>; Sue Kenney <[skenney@tylerbursch.com](mailto:skenney@tylerbursch.com)>

**Subject:** [EXTERNAL] RE: People v. Calvary Chapel (20cv372285): Order re: Defendants' Request for Continuance

Good morning Judge Manoukian, Department 3, and Department 7,

On December 27, 2020, I emailed the county informing them that the Defendants would move, ex parte, to continue the hearing on the motion for summary adjudication. I provided a summary of what the application would include.

The following day, I provided a draft of our ex parte application. I did inform Robin Wall that we would file the ex parte application on January 30, 2022. A copy of the email exchanges are attached.

However, on January 29, 2022, our process server, First Legal, improperly filed the papers. I called Robin Wall that same day, at 10:35 a.m. to let him know the application was filed a day earlier and that we had told our process service to inform the court it was supported to be filed on January 30, 2022.

Best,

Mariah

---

**From:** Tilak, Karun <[karun.tilak@cco.sccgov.org](mailto:karun.tilak@cco.sccgov.org)>  
**Sent:** Monday, January 2, 2023 2:09 PM  
**To:** [smanoukian@scscourt.org](mailto:smanoukian@scscourt.org); [department20@scscourt.org](mailto:department20@scscourt.org); Department 7 <[Department7@scscourt.org](mailto:Department7@scscourt.org)>; [department3@scscourt.org](mailto:department3@scscourt.org)  
**Cc:** Kiniyalocots, Melissa <[Melissa.Kiniyalocots@cco.sccgov.org](mailto:Melissa.Kiniyalocots@cco.sccgov.org)>; Wall, Robin <[robin.wall@cco.sccgov.org](mailto:robin.wall@cco.sccgov.org)>; Benkato, Jamila <[jamila.benkato@cco.sccgov.org](mailto:jamila.benkato@cco.sccgov.org)>; Mariah Gondeiro <[mgondeiro@tylerbursch.com](mailto:mgondeiro@tylerbursch.com)>; Sue Kenney <[skenney@tylerbursch.com](mailto:skenney@tylerbursch.com)>  
**Subject:** People v. Calvary Chapel (20cv372285): Order re: Defendants' Request for Continuance

Good Afternoon Judge Manoukian, Department 3, and Department 7,

I am counsel for the People of the State of California in *People v. Calvary Chapel San Jose* (20cv372285) and write in regards to the Court's January 1, 2023 order granting Defendants' request for a continuance of the summary adjudication hearing date (attached). The Court's order incorrectly indicates "No opposition presented." In fact, the People did file a timely opposition to Defendants' *ex parte* application on the morning of December 30, 2022, and emailed copies of that opposition to both Departments 3 and 7.

Defendants filed their *ex parte* application on December 29, 2022 without giving the People proper notice in violation of Local Civil Rule 16(C). (See attached Dec. 29, 2022 Email from S. Kenney to R. Wall et al. [attaching *ex parte* filings]; see also L. Civil Rule 16(C) [requiring that "[n]otice and service" of the *ex parte* application "must be provided as required by the Rules of Court by no later than 10:00 a.m. the court day before the *ex parte* application is submitted with proof of notice filed with

the application," emphasis added].) Defendants did not serve the ex parte application on the People by 10 a.m. on December 28, 2022, as required. In acknowledgement of this fact, Defendants' counsel expressly assured the People that the *ex parte* application would not be filed until December 30, 2022. (See attached Dec. 28, 2022 Email from M. Gondeiro to R. Wall et al. [stating that Calvary "will file the application Friday [12/30] morning"]; see also Dec. 29 2022 Email from S. Kenney to R. Wall.)

The People therefore had no notice that the *ex parte* application had in fact been filed on December 29, 2022, in violation of the Local Rules and counsel's express assurance. Once the People learned that the *ex parte* application had been prematurely filed by checking the docket, the People immediately filed an opposition on December 30, 2022. The People's opposition was both e-filed and was emailed to Departments 3 and 7. (See attached Dec. 30, 2022 Emails from A. D'Souza to Dep't 3 and Dep't 7.) Our understanding is that counsel for Defendants also emailed Departments 3 and 7 to indicate that the *ex parte* should have been filed on December 30. (See attached Dec. 30, 2022 Emails from Sue Kenney to Dep't 3 and Dep't 7.)

We have re-attached the People's timely filed opposition here for the Court's consideration. The relevant correspondence referenced above is contained in the attached zip folder. The People respectfully request that the Court withdraw its order and strike Defendants' *ex parte* application as filed without proper notice in violation of Local Civil Rule 16(C). In the alternative, we respectfully request that the Court reconsider its order in light of the People's opposition brief. If the Court is not inclined to withdraw or reconsider its order, the People respectfully request a hearing on the matter.

Sincerely,



Karun Tilak | Deputy County Counsel  
Office of the County Counsel, County of Santa Clara  
70 West Hedding Street, East Wing, 9<sup>th</sup> Floor | San José, CA 95110  
Office: (408) 299-5936 | Mobile: (669) 287-9076  
[karun.tilak@cco.sccgov.org](mailto:karun.tilak@cco.sccgov.org) | [counsel.sccgov.org](http://counsel.sccgov.org)

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